

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

KYLE WAYNE BANKSTON,	§	
Petitioner,	§	
VS.		§
	§	C.A. NO. C-05-448
		§
DOUGLAS DRETKE, Director TDCJ-ID,	§	
Respondent.	§	

**ORDER DENYING WITHOUT PREJUDICE MOTION FOR
APPOINTMENT OF COUNSEL AND ORDER GRANTING MOTION
FOR EXTENSION OF TIME**

Petitioner is an inmate in the Texas Department of Criminal Justice - Institutional Division, and is currently incarcerated at the McConnell Unit in Beeville, Texas. Proceeding *pro se*, petitioner filed a petition pursuant to 28 U.S.C. § 2254, challenging his “security precaution” designation by TDCJ-CID. On June 16, 2006, a memorandum and recommendation was filed, recommending dismissal because petitioner should have filed his complaint as a lawsuit pursuant to 42 U.S.C. § 1983 (D.E. 27). Petitioner filed objections, and is requesting appointment of counsel, or in the alternative an extension of time to supplement his objections after seeking the assistance of hired counsel (D.E. 27).

There is no constitutional right to counsel in federal habeas proceedings. *Johnson v. Hargett*, 978 F.2d 855 (5th Cir. 1992). Rule 8 of the Rules Governing § 2254 Cases requires that counsel be appointed if the habeas petition raises issues which mandate an evidentiary hearing. A recommendation to dismiss the petition is pending and at this stage of the proceedings, an evidentiary hearing is unnecessary, and appointment of counsel at this time is not warranted..

Counsel will be assigned *sua sponte* if there are issues which mandate an evidentiary hearing. Moreover, counsel may be assigned if discovery is ordered and issues necessitating the assignment of counsel are evident. Rule 6(a) of the Rules Governing § 2254 Cases; *Thomas v. Scott*, 47 F.3d 713, 715 n. 1 (5th Cir. 1995).

Accordingly, petitioner's motion for appointment of counsel (D.E. 29-1) is denied without prejudice. Petitioner's motion for an extension of time to file supplemental objections (D.E. 29-1) is granted. Petitioner's supplemental objections are due on or before **Monday, July 31, 2006.** ORDERED this 7th day of July, 2006.



B. JANICE ELLINGTON
UNITED STATES MAGISTRATE JUDGE